



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Frederick & Lewis Timber & Equipment, Inc.

**File:** B-244326

**Date:** October 11, 1991

Edward C. Keeton, Jr., Esq., for the protester,  
Rhea Daniels Moore, Esq., United States Department of  
Agriculture, for the agency,  
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Protester's high timber sale bid was properly rejected where the protester failed to bid on one specie of low grade timber at the announced fixed rate and the protester's bid was not high if the specified rate were used.

### DECISION

Frederick & Lewis Timber & Equipment, Inc. protests the award of a contract to Fannin Industries, Inc. for the Ratliff Timber Sale, conducted by the Forest Service, United States Department of Agriculture, Morehead, Kentucky. Frederick & Lewis contends that the Forest Service improperly rejected its high bid.

We deny the protest.

The Ratliff Timber Sale at Daniel Boone National Forest was advertised by the Forest Service on April 25 and 26, 1991, for sealed bids to purchase an estimated quantity of 23 thousand board feet (MBF) of pine saw timber and 1,373 MBF of hardwood saw timber. The solicitation required bidders to enter six separate bid prices for the identified species of saw timber to be purchased under the sale. The solicitation did not contain a blank for a seventh line item, low grade hardwood (LGH). The price for LGH was present on the solicitation schedule at a fixed rate of \$6.84 per MBF.

Frederick & Lewis submitted the apparent high bid with a bid of \$183,793.30, but had entered a price of \$55 for LGH by eradicating the \$6.84 and inserting \$55. The Forest Service recalculated the Frederick & Lewis bid, utilizing the \$6.84 fixed rate for LGH, as \$179,603.98. This resulted in

Frederick & Lewis's bid being considered second high. The new high bid was submitted by Fannin at \$183,430.74, who received the award.

Frederick & Lewis argues that the Forest Service may not recalculate its bid because the timber sale instructions advised bidders that award would be on the basis of total value. Frederick & Lewis contends that none of the solicitation materials indicated that the Forest Service was setting a fixed rate for LGH, so it reasonably assumed that the figure contained on the bid form was not intended to restrict bidders to a particular price for LGH, but rather was a typographical error. Frederick & Lewis contends that the Forest Service's action of setting a fixed rate for LGH was arbitrary, unreasonable, and otherwise violated government timber sale policy.

The Forest Service reports that it set the fixed rate for LGH in order to avoid skewed bidding, which occurs when bid premiums are placed on low value products rather than on the higher value products. The Forest Service maintains that skewed bidding practices on low value timber products results in skewed values, which may inhibit the agency's future ability to obtain fair market value for the timber. The Forest Service reports that inaccurate fair market value determinations of timber resulting from skewed bidding would be inconsistent with the National Forest Management Act, 16 U.S.C. § 472a (1988), which requires the Forest Service to ensure that the government receives fair market value for the sale of timber.

To the extent that the protester is challenging the propriety of the Forest Service setting a fixed rate for LGH in this solicitation, the protest is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991), protests against apparent solicitation improprieties must be filed prior to bid opening. The Forest Service's decision to preset the rate for LGH was apparent from the face of the solicitation, in which the price for LGH of \$6.84 was pre-entered on the bid form by the Forest Service. While Frederick & Lewis argues that it assumed that the pre-entered price was a typographical error,<sup>1/</sup> the \$6.84

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<sup>1/</sup> The Forest Service asserts that this matter was brought to Frederick & Lewis's representative's attention shortly before bid opening and Frederick & Lewis declined to change its bid. Three Forest Service representatives have submitted sworn statements that support this assertion. Frederick & Lewis admits that this matter was brought to its attention shortly before bid opening, but states that it did not have time to

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price was the only preset price on the bid schedule. In these circumstances, the protester should have contacted the agency to determine if in fact an error had been made since it was at least equally reasonable that the agency intended this rate to be fixed. See Laidlaw Envtl. Servs., Inc., B-244118, July 29, 1991, 91-2 CPD ¶ 98. In any case, since the protester did not question the set rate for LGH prior to bid opening, we dismiss this aspect of the protest as untimely. Id.

With regard to the bid evaluation, we find that the Forest Service did not act improperly in recalculating Frederick & Lewis's bid to reflect the fixed rate for LGH, since the solicitation evaluation scheme, on which basis the bids were to be submitted, required LGH to be bid at the fixed \$6.84 rate. Although Frederick & Lewis submitted the highest bid, it would have been inappropriate for the Forest Service to waive application of the rate set for LGH in calculating Frederick & Lewis's bid because this would have prejudiced the other bidders who adhered to the bidding scheme required by the solicitation. See Foss Alaska Line, 57 Comp. Gen. 784 (1978), 78-2 CPD ¶ 192; I.T.S. Corp., B-190562, Jan. 24, 1978, 78-1 CPD ¶ 64. That is, the recalculation was necessary to evaluate all bidders on essentially the same basis, id., and properly resulted in Frederick & Lewis being displaced as the high bidder. Compare Buildings By Thrift, Inc., B-215036, June 28, 1984, 84-1 CPD ¶ 691 and W-I Forest Prods., Inc., B-204168.2, Feb. 17, 1982, 82-1 CPD ¶ 138, where recalculations of bids, which did not adhere to the announced evaluation scheme for bidding on a certain specie of timber, showed that the bids were high under any calculation, and they could be therefore accepted without prejudice to the other bidders. Under the circumstances, Frederick & Lewis's high bid was properly rejected.

The protest is denied.

  
James F. Hinchman  
General Counsel

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have time to modify its bid. The Forest Service further asserts that this matter was discussed in several pre-bid meetings, one of which Frederick & Lewis attended. Finally, all of the other bidders submitted bids with the \$6.84 rate for LGH.